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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

WAYNE PHILLIP HAACK,  
Plaintiff,  
vs.  
CITY OF CARSON CITY, et. al.  
Defendants.

3:11-cv-00353-RAM

**MEMORANDUM DECISION  
AND ORDER**

Before the court is defendants Carson City and Scott Davis's Motion for Summary Judgment. (Doc. # 44.)<sup>1</sup> Plaintiff Wayne Phillip Haack opposed (Doc. # 49) and Carson City and Davis replied (Doc. # 56).

**I. BACKGROUND**

Plaintiff originally filed his Complaint in the First Judicial District Court for Carson City, and it was subsequently removed by Defendants. (See Pet. for Removal (Doc. # 1).) Defendants are Carson City, Scott Davis, and Jose Delfin. (See Pl.'s Compl. (Doc. # 2) at 2-3.) This motion is brought only on behalf of defendants Carson City and Scott Davis. Defendant Delfin recently brought a motion to dismiss which the court granted in part and denied in part. (See Delfin's Mot. to Dismiss (Doc. # 38) and Order (Doc. # 55).) The facts leading up to this action are by and large undisputed and are recounted below.

Plaintiff became employed as a probationary wood shop teacher at a school in Carson City, Nevada, on August 17, 2009. (Doc. # 2 ¶ 8.) He claims that it was his custom to carry a

<sup>1</sup> Refers to court's docket number.

1 pocket utility knife in order to trim his students' wood shop projects. (*Id.*) On November 5,  
2 2009, Plaintiff attended a meeting with his former supervisor and Associate Superintendent  
3 of the Carson City School District, Delfin, in an unsuccessful attempt to persuade Delfin to  
4 place Plaintiff higher on the school district's salary schedule. (*Id.* ¶¶ 9-10.) According to  
5 Plaintiff, after the meeting he turned to Delfin's administrative assistant, Lily Reedy, took the  
6 closed utility knife from his pocket and said, "I was tempted to use it, but I didn't." (*Id.* ¶ 11.)

7 Reedy's recollection was that when Plaintiff brandished the knife he said something  
8 along the lines of, "for the amount of money that I didn't get, I could have hired a hit man."  
9 (*See* Doc. # 44-1 (Ex. 7) at 39, trans. p. 32:7-10.) Regardless of the statement Plaintiff made,  
10 the parties agree that Reedy became more concerned about the incident later, and decided to  
11 report it to Delfin and the Superintendent of Schools, Richard Stokes, the following day. (Doc.  
12 # 2 ¶¶ 12-13; Doc. # 44-1 (Ex. 7) at 40, trans. pp. 33-34.)

13 Delfin subsequently notified Davis about the incident. Davis was a Carson City Sheriff's  
14 Deputy assigned as a School Resource Officer. (Doc. # 44-1 (Ex. 8) at 46, trans. p. 55:4-24.)  
15 In the course of his investigation, Davis obtained a statement from Reedy as well as from  
16 Delfin. (*Id.* at 47-48, trans. p. 57:18-22, p. 58:12-16.) Davis also called Reedy during his  
17 investigation to inquire as to her reaction and determine if Reedy felt there was a viable threat  
18 on the part of Plaintiff. (*Id.* at 49, trans. p. 60:6-25.) Reedy was emotionally and physically  
19 upset and told Davis that she could not sleep. (*Id.*)

20 Plaintiff was summoned to a meeting with Delfin and others on November 17, 2009, and  
21 a discussion ensued about the utility knife incident. (Doc. # 2 ¶¶ 15-16.) Delfin asked Davis to  
22 be present that day, but Delfin did not specify the purpose of the meeting or speak to Davis  
23 prior to the commencement of the meeting about the possibility of arresting Plaintiff. (Doc.  
24 # 44-1 (Ex. 9) at 61-62, trans. pp. 124:1-15, 125:2-14.) When he arrived at the school on  
25 November 17, 2009, Davis went into Vice Principal Karen Sims's office and waited. (Doc. # 44-  
26 1 (Ex. 9) at trans. p. 63:3-10.)

27 During the meeting, Plaintiff was questioned about the utility knife and confirmed that  
28

1 he carried it, and produced it to Delfin. (Doc. # 2 ¶¶ 15-16; Doc. # 44-1 at 64-66, trans. pp.  
2 128:23-25, 129:1-3, 130:17-19.) Delfin subsequently entered Ms. Sims's office, carrying the  
3 knife, advised Davis that Plaintiff admitted to making the statement, and asked that Plaintiff  
4 be arrested. (Doc. # 44-1 (Ex. 9) at 64-66, trans. pp. 128:21-25, 129:1-3, 130:17-21.)

5 Plaintiff was subsequently placed under arrest by Davis for violating Nevada Revised  
6 Statute 392.915, threatening or intimidating an employee of a school district, a gross  
7 misdemeanor. (Doc. # 2 ¶¶ 17-18; Doc. # 44-1 at 65, trans. p. 129:1-5.) Davis then transported  
8 Plaintiff approximately one and a half miles to the Carson City Jail, where he was turned over  
9 to the jail deputies. (Doc. # 44-1 (Ex. 11) at 73, ¶ 5.)

10 Plaintiff was charged with a lesser offense, under Nevada Revised Statute 392.9103,  
11 creating a disturbance in a school building. (Doc. # 44-1 (Ex. 13) at 78.) Plaintiff eventually  
12 pled no contest to a lesser charge of disorderly conduct, a misdemeanor, in violation of Carson  
13 City Municipal Code section 8.04.010. (*Id.*; Doc. # 44-1 (Ex. 1) at 8, p. 62:3-15.) In connection  
14 with the plea agreement, Plaintiff was given a six month deferred sentence which included the  
15 conditions that he obey all laws, that he have no complaints of disorderly conduct, that he have  
16 no contact with Reedy or Delfin, and that he not engage in any violence or threats of violence.  
17 (Doc. # 44-1 (Ex. 13) at 78-79.)

18 Plaintiff asserts the following federal claims against Carson City and Davis: (1) Davis  
19 arrested Plaintiff on November 17, 2009, in violation of the Fourth Amendment; (2) Davis  
20 conspired with Delfin to violate Plaintiff's Fourth Amendment rights; (3) Carson City failed to  
21 properly train and supervise Davis concerning the manner in which warrantless arrests may  
22 be made so as to subject Carson City to municipal liability under 42 U.S.C. § 1983. (Doc. # 2  
23 at 5-7.) In addition, Plaintiff asserts the following state law claims against Carson City and  
24 Davis: (1) false arrest and/or imprisonment as to Davis; (2) negligent hiring, retention and  
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1 supervision of Davis and Delfin by Carson City<sup>2</sup>; (3) intentional infliction of emotional distress<sup>3</sup>;  
2 and (4) negligence. (Doc. # 2 at 7-9.)

3 Carson City and Davis move for summary judgment, arguing: (1) Plaintiff's federal  
4 claims are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994); (2) Plaintiff's warrantless arrest  
5 was supported by probable cause; (3) Davis is entitled to qualified immunity with respect to  
6 Plaintiff's federal claims; (4) the failure to train, supervise and control claim against Carson  
7 City fails because there was no underlying constitutional violation and there is no evidence to  
8 support this claim; (5) Plaintiff's state law claims should be dismissed pursuant to the  
9 governmental immunity set forth in Nevada Revised Statute 41.032(2); and (6) the state law  
10 claims are not supported by the evidence. (Doc. # 44.)

## 11 II. LEGAL STANDARD

12 "The purpose of summary judgment is to avoid unnecessary trials when there is no  
13 dispute as to the facts before the court." *Northwest Motorcycle Ass'n v. U.S. Dep't of Agric.*,  
14 18 F.3d 1468, 1471 (9th Cir. 1994) (citation omitted). All reasonable inferences are drawn in  
15 favor of the non-moving party. *In re Slatkin*, 525 F.3d 805, 810 (9th Cir. 2008) (citing  
16 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). Summary judgment is appropriate  
17 if "the pleadings, the discovery and disclosure materials on file, and any affidavits show that  
18 there is no genuine issue as to any material fact and that the movant is entitled to judgment as  
19 a matter of law." *Id.* (quoting Fed.R.Civ.P. 56(c)). Where reasonable minds could differ on the  
20 material facts at issue, however, summary judgment is not appropriate. *See Anderson*, 477 U.S.  
21 at 250.

22 The moving party bears the burden of informing the court of the basis for its motion,  
23 together with evidence demonstrating the absence of any genuine issue of material fact.

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24  
25 <sup>2</sup> Plaintiff alleged negligent hiring, retention and supervision by Carson City as to Delfin, however, it is  
26 apparently undisputed that Delfin was an employee of the school district and not Carson City. Therefore, this  
claim will not be construed as applying to Delfin.

27 <sup>3</sup> Plaintiff concedes that his claim for intentional infliction of emotional distress against Carson City and  
28 Davis may be dismissed. (See Doc. # 48 at 10.) Therefore, summary judgment shall enter in favor of Carson City  
and Davis as to this claim.

1 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Although the parties may submit evidence  
2 in an inadmissible form, only evidence which might be admissible at trial may be considered  
3 by a trial court in ruling on a motion for summary judgment. Fed.R.Civ.P. 56(c).

4 In evaluating the appropriateness of summary judgment, three steps are necessary: (1)  
5 determining whether a fact is material; (2) determining whether there is a genuine issue for the  
6 trier of fact, as determined by the documents submitted to the court; and (3) considering that  
7 evidence in light of the appropriate standard of proof. *See Anderson*, 477 U.S. at 248-250. As  
8 to materiality, only disputes over facts that might affect the outcome of the suit under the  
9 governing law will properly preclude the entry of summary judgment; factual disputes which  
10 are irrelevant or unnecessary will not be considered. *Id.* at 248.

11 In determining summary judgment, a court applies a burden shifting analysis. "When  
12 the party moving for summary judgment would bear the burden of proof at trial, 'it must come  
13 forward with evidence which would entitle it to a directed verdict if the evidence went  
14 uncontroverted at trial.' [ ] In such a case, the moving party has the initial burden of  
15 establishing the absence of a genuine issue of fact on each issue material to its case." *C.A.R.*  
16 *Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (internal  
17 citations omitted). In contrast, when the nonmoving party bears the burden of proving the  
18 claim or defense, the moving party can meet its burden in two ways: (1) by presenting evidence  
19 to negate an essential element of the nonmoving party's case; or (2) by demonstrating that the  
20 nonmoving party failed to make a showing sufficient to establish an element essential to that  
21 party's case on which that party will bear the burden of proof at trial. *See Celotex*, 477 U.S. at  
22 323-25. If the moving party fails to meet its initial burden, summary judgment must be denied  
23 and the court need not consider the nonmoving party's evidence. *See Adickes v. S.H. Kress &*  
24 *Co.*, 398 U.S. 144, 160 (1970).

25 If the moving party satisfies its initial burden, the burden shifts to the opposing party  
26 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v.*  
27 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute,  
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1 the opposing party need not establish a material issue of fact conclusively in its favor. It is  
 2 sufficient that "the claimed factual dispute be shown to require a jury or judge to resolve the  
 3 parties' differing versions of the truth at trial." *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*  
 4 *Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987)(quotation marks and citation omitted). The  
 5 nonmoving party cannot avoid summary judgment by relying solely on conclusory allegations  
 6 that are unsupported by factual data. *Id.* Instead, the opposition must go beyond the assertions  
 7 and allegations of the pleadings and set forth specific facts by producing competent evidence  
 8 that shows a genuine issue for trial. *See* Fed.R.Civ.P. 56(e); *Celotex*, 477 U.S. at 324.

9 At summary judgment, a court's function is not to weigh the evidence and determine the  
 10 truth but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249.  
 11 While the evidence of the nonmovant is "to be believed, and all justifiable inferences are to be  
 12 drawn in its favor," if the evidence of the nonmoving party is merely colorable or is not  
 13 significantly probative, summary judgment may be granted. *Id.* at 249-50, 255 (citations  
 14 omitted).

### 15 III. DISCUSSION

#### 16 **A. PLAINTIFF'S FEDERAL CLAIMS AND *HECK V. HUMPHREY***

17 Carson City and Davis argue that Plaintiff's federal claims are barred pursuant to *Heck*  
 18 *v. Humphrey*, 512 U.S. 477 (1994). (Doc. # 44 at 9-13.)

19 In *Heck*, the Supreme Court held:

20 [I]n order to recover damages for allegedly unconstitutional conviction or  
 21 imprisonment, or for other harm caused by actions whose unlawfulness would  
 22 render a conviction or sentence invalid, a § 1983 plaintiff must prove the  
 23 conviction or sentence has been reversed on direct appeal, expunged by executive  
 24 order, declared invalid by a state tribunal authorized to make such a  
 determination, or called into question by a federal court's issuance of a writ of  
 habeas corpus. A claim for damages bearing that relationship to a conviction or  
 sentence that has not been so invalidated is not cognizable under § 1983.

25 *Id.* at 487.

26 The court "must consider whether a judgment in favor of the plaintiff would necessarily  
 27 imply the invalidity of his conviction or sentence; if it would, the complaint must be  
 28 dismissed[.]" *Id.* If, however, "the district court determines that the plaintiff's action, even if

1 successful, will *not* demonstrate the invalidity of any outstanding criminal judgment against  
2 the plaintiff, the action should be allowed to proceed, in the absence of some other bar to the  
3 suit.” *Id.* “*Heck*, in other words, says that if a criminal conviction arising out of the same facts  
4 stands and is fundamentally inconsistent with the unlawful behavior for which section 1983  
5 damages are sought, the 1983 action must be dismissed.” *Smithart v. Towerly*, 79 F.3d 951, 952  
6 (9th Cir. 1996).

7 The Ninth Circuit has applied *Heck* in the context of alleged Fourth Amendment  
8 violations. *See Szajer v. City of Los Angeles*, 632 F.3d 607, 611 (9th Cir. 2011), *cert. denied*,  
9 132 S.Ct. 98 (Oct. 3, 2011); *Smithart*, 79 F.3d at 952 (“[t]here is no question that *Heck* bars  
10 [a plaintiff’s] claim that defendants lacked probable cause to arrest him and brought unfounded  
11 criminal charges against him.”).

12 Here, Plaintiff ultimately pled no contest to the lesser charge of disorderly conduct in  
13 violation of Carson City Municipal Code section 8.04.010. (Doc. # 44-1 (Ex. 1) at 8, trans. p.  
14 62:3-15.) A no contest plea has the same effect as a guilty plea or other conviction for purposes  
15 of applying the *Heck* doctrine. *See Szajer*, 632 F.3d at 610, 612 (no contest plea to felony  
16 weapons possession barred later civil action alleging illegal search); *see also Webb v. City and*  
17 *County of San Francisco*, 2011 WL 615605, at \*6 (N.D. Cal. Dec. 12, 2011) (finding that  
18 *Heck* applied under circumstances where the plaintiff entered a no contest plea). Plaintiff does  
19 not dispute this is the case. (See Doc. # 48 at 5:14-18 (“Haack is not contending that his no  
20 contest plea distinguishes his case from *Heck*.”).) Moreover, it is clear that under Nevada law,  
21 a no contest plea is the equivalent of a guilty plea. *See State v. Lewis*, 178 P.3d 146, 147 (Nev.  
22 2008). Plaintiff was advised of this fact during his criminal proceeding. (Doc. # 44-1 at 81;  
23 Doc. # 45 (Notice of Manual Filing of Ex. 14).)

24 Plaintiff’s conviction has not been overturned or otherwise invalidated. Therefore, the  
25 dispositive question the court must answer is if Plaintiff prevails on his section 1983 claim,  
26 would it necessarily imply the invalidity of his state court conviction.

27 Plaintiff argues that his contention that his arrest for a gross misdemeanor was  
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1 unconstitutional does not necessarily imply the invalidity of his ultimate conviction for  
2 disorderly conduct, a misdemeanor charge. (Doc. # 48 at 3-4, 5-6.) Plaintiff reasons that the  
3 basis for a proper warrantless arrest under Nevada law is probable cause that he committed a  
4 felony or gross misdemeanor, and the assertion that his arrest for a gross misdemeanor was  
5 unsupported by probable cause is not inconsistent with the misdemeanor conviction. (*Id.* at  
6 4.) Plaintiff goes on to argue that the reduction of the charge from a gross misdemeanor to a  
7 misdemeanor actually supports Plaintiff's claim that there was no probable cause for the gross  
8 misdemeanor arrest. (*Id.*)

9       The court is not persuaded by Plaintiff's argument. Plaintiff cites no authority, in this  
10 circuit or otherwise, in support of his argument. If the court went along with Plaintiff's  
11 reasoning, whenever a criminal defendant enters into a plea agreement which results in the  
12 entry of a plea to a lesser offense than that for which he or she was arrested, *Heck* would not  
13 apply. The court agrees with Carson City and Davis that plea negotiations involve various  
14 considerations which may have absolutely no relationship to whether there was probable cause  
15 for the underlying arrest.

16       Moreover, the Ninth Circuit has characterized *Heck* as applying to those cases in which  
17 "a criminal conviction *arising out of the same facts* stands and is fundamentally inconsistent  
18 with the unlawful behavior for which section 1983 damages are sought[.]" *Smithart*, 79 F.3d  
19 at 952. Plaintiff has not presented evidence that the facts underlying the gross misdemeanor  
20 charge were different than the facts underlying the misdemeanor charge. In fact, the video of  
21 the criminal proceeding where Plaintiff entered his plea reveals that the disorderly conduct  
22 charge was based on the same set of facts as his arrest for the gross misdemeanor. (Doc. # 44-1  
23 (Ex. 14), Doc. # 45 (Notice of Manual Filing of Ex. 14).)

24       The court finds that Plaintiff's no contest plea to the disorderly conduct charge, which  
25 is based on the exact same set of facts as the gross misdemeanor arrest, is "fundamentally  
26 inconsistent with the unlawful behavior for which the section 1983 damages are sought." If the  
27 court were to find there was no probable cause to support Plaintiff's arrest for the gross  
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1 misdemeanor, it would imply there was no probable cause to charge him with the  
2 misdemeanor, which would invalidate the misdemeanor charge. Therefore, the court finds that  
3 if Plaintiff were to prevail on his federal claims, it would result in a finding that there was no  
4 probable cause to support his arrest, which would necessarily imply the invalidity of his no  
5 contest plea, which is the equivalent of a conviction in Nevada.

6 To the extent Plaintiff asserts a claim for conspiracy and a claim against Carson City  
7 under *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658 (1978), such claims may not  
8 be pursued in the absence of an underlying constitutional deprivation or injury. *See City of Los*  
9 *Angeles v. Heller*, 475 U.S. 796, 799 (1986); *Villegas v. Gilroy Garlic Festival Ass'n*, 541 F.3d  
10 950, 957 (9th Cir. 2008) ("Because there is no constitutional violation, there can be no  
11 municipal liability."); *Lacey v. Maricopa County*, 2012 WL 3711591, at \*28 (9th Cir. Aug. 29,  
12 2012) (citations omitted) ("there must always be an underlying constitutional violation" to  
13 assert a conspiracy claim under section 1983).

14 Therefore, Plaintiff's claims for violation of the Fourth Amendment, conspiracy to  
15 violate the Fourth Amendment, and that Carson City failed to properly train and supervise  
16 Davis concerning the manner in which warrantless arrests may be made so as to subject Carson  
17 City to municipal liability under 1983, are dismissed without prejudice. *See Trimble v. City*  
18 *of Santa Rosa*, 49 F.3d 583, 585 (9th Cir. 1995) (dismissals pursuant to *Heck* must be without  
19 prejudice to give the plaintiff the opportunity to re-file should he succeed in invalidating his  
20 conviction or sentence).

21 With respect to Plaintiff's conspiracy claim, the court recently granted defendant Delfin's  
22 motion to dismiss this claim with leave to amend. (See Doc. # 55.) Leave to amend was granted  
23 with the assumption that Plaintiff still had a viable Fourth Amendment claim against defendant  
24 Davis, that would form the underlying basis for the conspiracy claim. Because the court has  
25 dismissed the Fourth Amendment claim as to defendant Davis as *Heck* barred, the court must  
26 now also dismiss the conspiracy claim against defendant Delfin without prejudice. *See Lacey*,  
27 2012 WL 3711591, at \*28 ("there must always be an underlying constitutional violation" to  
28

1 assert a conspiracy claim under section 1983).

2 **B. PLAINTIFF'S STATE LAW CLAIMS**

3 Plaintiff's remaining claims against Carson City and Davis are the state law claims of  
4 false arrest and/or imprisonment; negligent hiring, retention and supervision; and negligence.

5 First, Carson City argues that these claims should be dismissed pursuant to the  
6 discretionary immunity provided to government entities and their employees under Nevada  
7 Revised Statute 41.032(2). (Doc. # 44 at 19-20.) Additionally, Carson City contends there is no  
8 evidence to support these claims. (*Id.* at 21-23.)

9 In response, Plaintiff asserts that his state law claims are not barred by discretionary  
10 immunity. (Doc. # 48 at 9.) He further asserts that triable issues of material fact exist as to  
11 these claims. (*Id.* at 9-11.)

12 While Nevada has generally waived its immunity from liability in Nevada Revised  
13 Statute 41.031, it has retained immunity as provided in Nevada Revised Statute 41.032 to  
14 41.038, 485.318(3), and any other statute that expressly provides for government immunity.  
15 Nev. Rev. Stat. 41.031(1).

16 Nevada Revised Statute 41.032(2) provides in pertinent part:

17 No action may be brought under NRS 41.031 or against an immune contractor  
18 or an officer or employee of the State or any of its agencies or political  
subdivisions which is:

19 ...

20 2. Based upon the exercise or performance of the failure to exercise or perform  
a discretionary function or duty on the part of the State or any of its agencies or  
political subdivisions or of any officer, employee or immune contractor of any of  
these, whether or not the discretion involved is abused.

21 Nev. Rev. Stat. 41.032(2).

22 This district has expressly found that the Nevada Supreme Court "has implicitly  
23 assumed that municipalities are political subdivisions of the State for the purposes of applying  
24 the discretionary act immunity statute." *Sandoval v. Las Vegas Met. Police Dept.*, 2012 WL  
25 607283, at \*13 (D. Nev. Feb. 24, 2012) (citing *Travelers Hotel, Ltd. v. City of Reno*, 103 Nev.  
26 343, 741 P.2d 1353, 1354-55 (1987)). In Nevada, discretionary-function immunity applies if a  
27 decision: "(1) involves an element of individual judgment or choice and (2) is based on  
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1 considerations of social, economic, or political policy.” *Id.* at \*14 (citing *Martinez v.*  
2 *Maruszczak*, 123 Nev. 433, 168 P.3d 720, 727, 729 (2007)). In addition, “[t]he discretionary  
3 function exception protects agency decisions concerning the scope and manner in which it  
4 conducts an investigation so long as the agency does not violate a mandatory directive.” *Id.*  
5 (quoting *Vickers v. United States*, 228 F.3d 944, 951 (9th Cir. 2000)).

6 In *Sandoval v. Las Vegas Metropolitan Police Department*, the court determined that  
7 the law enforcement officers were entitled to discretionary-function immunity in connection  
8 with effectuating an arrest. *See Sandoval*, 2012 WL 607283 at \*14.

9 In determining how to best enforce the law, law enforcement officers are  
10 required to consider their training, the need to arrest certain parties, the concern  
11 for their own safety, the concern for the arrestee’s safety, the public’s safety, the  
12 resources available to the officer, [police department] policies, and the  
13 information the officer has on hand.  
14 *Id.* (citation omitted). “These factors indicate that the officers’ decision to arrest Plaintiffs is  
15 ‘fundamentally rooted in policy considerations, and that judicial second-guessing of this  
16 decision thus is not appropriate.’” *Id.* (citation omitted).

17 Here, as in *Sandoval*, the court finds that defendant Davis’s decision to arrest Plaintiff  
18 involved an exercise of his judgment based on social and policy considerations. With no  
19 evidence that he violated a mandatory directive in connection with the arrest of Plaintiff, Davis  
20 and Carson City are entitled to discretionary-function immunity under Nevada Revised Statute  
21 41.032(2) with respect to Plaintiff’s state law tort claims.

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**IV. CONCLUSION**

Davis and Carson City's Motion for Summary Judgment (Doc. # 44) is **GRANTED**, as follows:

(1) Plaintiff's federal claims, set forth in the Complaint as the First through Fourth claims for relief, are **DISMISSED WITHOUT PREJUDICE** pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994); and

(2) Summary judgment shall be entered in favor of Carson City and Davis as to Plaintiff's state law claims, set forth in the Complaint as the fifth through tenth claims for relief.

**IT IS SO ORDERED.**

**LET JUDGMENT ENTER ACCORDINGLY.**

DATED: September 10, 2012.



ROBERT A. MCQUAID, JR.  
UNITED STATES MAGISTRATE JUDGE